



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
 WILLIAM C. AND KATHLEEN J.)
 WHITE)

For Appellants: John K. Cotter
Attorney at Law

For Respondent: Carl G. Knopke
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code ~~from the~~ action of the Franchise Tax Board on the protest of William C. and Kathleen J. White against a proposed **assessment** of additional personal income tax and penalty in the total amount of **\$1,339.06** for the year 1974, on the protests of William C. White against proposed assessments of additional personal income tax and penalties in the amounts of \$730.14, **\$1,371.00**, and **\$1,789.35** for the years 1975, 1976, and 1977, respectively, and on the protests of Kathleen J. White against proposed assessments of additional personal income tax and penalties in the amounts of \$572.00, \$833.90, and \$256.36 for the years 1975, 1976, and 1977, respectively.

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Appellants became ministers in the Free Trinity Christian Church in 1974. At that time, they took vows of poverty which stated they were transferring to that church all rights to their present and future property and income. In 1975, appellants formed the United Libertarian Church, to which they "transferred" their vows of poverty and rights to their property and income.

Appellants filed a delinquent joint 1974 personal income tax return. They deducted their entire gross income and requested a refund, alleging their income was exempt from taxation. A refund of income taxes withheld was issued when the return was processed. In 1975, appellants filed an income tax return form with only zeros in the spaces for gross income and deductions. No returns were filed for 1976 and 1977.

Audits were conducted by respondent for each of the years 1974, 1975, 1976, and 1977, and proposed assessments were issued for each of those years. For 1975, 1976, and 1977, the proposed assessments were based upon information supplied by either Stanford University (Mr. White's employer), Pan American World Airways, Inc. (Mrs. White's employer), or the California Employment Development Department. Since returns were not filed, assessments were computed for each appellant separately for those years. Various penalties were also imposed for each year. The issue presented is whether appellants have shown respondent's determinations to be erroneous.

Appellants assert that they had no income and were not required to file returns during the years in issue since they had taken vows of poverty, assigning all their prospective income to their church, and all money given to them immediately became the property of their church. In receiving compensation for services rendered to Stanford University and Pan American, they apparently contend that they were mere agents of the church. They argue that the First Amendment to the United States Constitution and Internal Revenue Code section 3401(a)(9) prohibit the taxation of this compensation by the federal government, and California is also prohibited from taxing it by the Fourteenth Amendment, Revenue and Taxation Code section 17137, and Article I, section 4 of the California Constitution.

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In William C. White, ¶ 81,147 P-H Memo T.C. (1981), the United States Tax Court dealt with the same issues now before us and reached a decision adverse to the appellants for the years 1974 and 1975. The disposition of appellant's case on the federal level is highly persuasive of the result which should be reached in this appeal. (Appeal of Dorothy C. Thorpe Glass Mfg. Corp., Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Estate of Adam Holzwarth, Deceased, and Mary Holzwarth, Cal. St. Bd. of Equal., Dec. 12, 1967.) Although the tax court decision was limited to the years 1974 and 1975, the only years before the court in that proceeding, appellants have stated that the issues for all the years involved in this appeal are the same as those considered by the tax court. We therefore find that the persuasiveness of the tax court's decision is not impaired by the fact that it dealt only with two of the four years before us in this appeal. (See Appeals of Wilfred and Gertrude Winkenbach, et al., Cal. St. Bd. of Equal., Dec. 16, 1975.)

In reaching its decision, the tax court found appellants' agency and assignment of income contentions to be without-merit. "In sum, the Church did not exercise control over petitioners' assets or actions." (William C. White, supra.) The court went on to state that appellants had totally misinterpreted section 3401(a)(9) of the Internal Revenue Code, since it applied only to income tax withholding by employers. It also rejected appellants' First Amendment arguments.

Since appellants have made the same arguments in this appeal, or have based their arguments on the issues already decided by the tax court, we find that court's determination to be controlling in this appeal. We also note that many of appellants' arguments are the same as those which we rejected in the Appeal of Jack V. and Allene J. Offord, decided this day. Appellants have in no way contested any of the penalties involved, and they are, therefore, presumed to be correct.

For the reasons stated above, we sustain respondent's actions.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code that the actions of the Franchise Tax Board on the protest of William C. and Kathleen J. White against a proposed assessment of additional personal income tax and penalty in the total amount of \$1,339.06 for the year 1974, on the protests of William C. White against proposed assessments of additional personal income tax and penalties in the amounts of \$730.14, \$1,371.00, and \$1,789.35 for the years 1975, 1976, and 1977, respectively, and on the protests of Kathleen J. White against proposed assessments of additional personal income tax and penalties in the amounts of \$572.00, \$833.90, and \$256.36 for the years 1975, 1976, and 1977, respectively, be and the same are hereby sustained.

Done at Sacramento, California, this 23rd day of June, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

, Member